IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7019 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPKUMAR R JOSHI

Versus

ADMINISTRATIVE OFFICER

Appearance:

1. Special Civil Application No. 7019 of 1993

MR NK MAJMUDAR for Petitioner No. 1

MR PRANAV G DESAI for Respondent No. 1

MS HARSHA DEVANI AGP for Respondent No. 2-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/03/2003

ORAL JUDGEMENT

The petitioner before this Court is an Assistant Teacher in Deaf & Dumb School, run and managed by the Nagar Primary Education Committee, Baroda, the respondent no. 1 herein [hereinafter referred to as, "the Committee"].

The petitioner possesses the qualification of SSCE and a Diploma in Deaf and Dumb Training. The petitioner was appointed by the Committee as an Assistant Teacher w.e.f 15th September, 1980. The petitioner's appointment was made in the payscale of Rs. 350-600. However, under order dated 3rd May, 1982, the appointment of the petitioner was approved by the Director of Social Defence in the payscale of Rs. 290-560. Nevertheless, the petitioner continued to receive the pay in the payscale of Rs. 350-600. On revision of the pay, pursuant to the Revision of Pay Rules, 1987, the question of fixation of pay of the petitioner arose. The Government authorities insisted that the petitioner's initial appointment was approved in the payscale of Rs. 290-560, however, he was wrongly placed in the scale of Rs. 350-600. The State Government, therefore, under communication dated 19th April, 1990 called upon the Committee to explain the higher payscale given in respect of the petitioner and instructed it to recover the excess amount paid to the petitioner. Pursuant to the said direction, the increments due and payable to the petitioner have not been released in the revised payscale since the year 1987. Feeling aggrieved, the petitioner has preferred the present petition.

It is prayed that on revision of pay with effect from 1st January, 1986, the petitioner's pay be fixed in the scale of Rs. 1350-2200, the scale corresponding to the payscale of Rs. 350-600. It is also prayed that all increments pursuant to such pay fixation, be released.

As recorded hereinabove, the question is that of fixation of pay of the petitioner. Under Government Order dated 4th December, 1974 made by the Director of Social Defence, a post of Assistant Teacher was sanctioned for the Deaf & Dumb School run by the Committee. The said order refers to three different payscales for the candidates possessing different qualifications. The scale of Rs. 225-450 was prescribed for a Trained Graduate having a Diploma in Training of Physically Handicapped. The payscale of Rs. 225-350 was prescribed for a trained Graduate with STC [Secondary Teachers Certificate] or TD [Teachers' Diploma] and a payscale of Rs. 155-260 for a trained Matriculate or Undergraduate with STC or a Diploma in Training of

Physically Handicapped. Under the Gujarat Civil Services [Revision of Pay] Rules, 1975, the said scales were revised w.e.f 1st January, 1973. The scale of Rs. 225-450 [applicable to a trained Graduate] was revised to Rs. 440-750. The scale of Rs. 225-350 [applicable to Graduates with STC or TD] was revised to Rs. 440-650. The scale of Rs. 155-260 [applicable to S.S.C.E or Undergraduate Teacher with Diploma in Training of Physically Handicapped] was revised to Rs. 290-560. The said payscales were, under Government Resolution dated 29th September, 1976, made applicable to the staff of the Grant-in-Aid Institutions getting grant-in-aid from the Director of Social Welfare. The preamble to the said Resolution states, inter alia, that, "...After careful considerations, Government has decided that the provisions of the Gujarat Civil Services [Revision of Pay] Rules, 1975 may be made applicable to the staff of these Grant-in-Aid institutions mutatis mutandis w.e.f 1st January, 1973, subject to the following modifications:-

The relevant Clause reads as under :-

"..The expressions "presents scale" and revised scale" mean the scale of pay specified respectively in Col. 3 and Col. 4 of the Schedule appended to this Resolution and reference to schedules in the said Rules should be ignored."

Thus, under the said Resolution dated 29th September, 1976, the provisions made in the Gujarat Civil Services (Revisions of Pay) Rules, 1975 were made applicable to the petitioner and such other teachers; subject to the entries made in schedule appended thereto. In the said Schedule, Item No. 2 refers to Assistant Teachers, Graduate & Under Graduate. The 'present scale' of Rs. 225-350 had been revised to Rs. 440-640. Item no. 3 is that of Craft Instructor where the 'present scale' of Rs. 155-260 was revised to Rs. 350-600. The said Resolution was followed by a Corrigendum dated 16th April, 1977. Under the said corrigendum, item no. 2 of the said Schedule was trifurcated i.e., the Item No. 2 was split into three items namely; Item Nos. 2, 2-A & 2-B. Under Item 2-B, the present scale of Rs. 155-240 of Assistant Teachers in Physically Handicapped Schools had been revised to the payscale of Rs. 290-560. For the trained Graduates holding Diploma, the 'present scale' of Rs. 225-450 had been revised Rs. 440-750.

While for the trained Under-graduates, the 'present scale' of Rs. 225-350 had been revised to Rs. 440-640. Thus, the pay scale applicable to the institutions receiving grant-in-aid from the Director of Social Welfare had been brought in consonance with the aforesaid Revision of Pay Rules of 1975.

Indisputably, the petitioner possesses the qualification of SSCE and a Diploma in Training of Deaf & Dumb. Hence, pursuant to the order dated 4th December, 1974, he would be entitled to be placed in the scale of Rs. 155-260. Since the petitioner's appointment was made in the year 1980, he ought to be placed in the revised scale under the aforesaid Government Resolution dated 29th September, 1976 read with corrigendum dated 1st April, 1977. Under the aforesaid Revision of Pay Rules of 1975, as well as under the above referred Government Resolution dated 29th September, 1976 read with Corrigendum dated 1st April, 1977, the admissible payscale for the Assistant Teacher in Physically Handicapped Schools possessing the qualification of SSC/Under Graduate with Diploma in Training of Physically Handicapped was Rs. 290-560. The scale of Rs. 350-600 had not been provided for any of the categories of the Assistant Teachers [i.e., the trained Graduate with Diploma or a trained Under-graduate or SCCE with Diploma]. But, it appears that under the aforesaid Resolution dated 29th September, 1976 and the schedule annexed thereto, the existing scale of Rs. 155-260 of the Craft Instructor had been revised to Rs. 350-600. The petitioner, at the time of his appointment, appears to have been placed in the payscale of the Craft Teacher. Be it noted that the said Resolution did not refer to a general upward revision from the scale of Rs. 155-260 to that of Rs. 350-600. The scale of Rs. 155-260 sanctioned under the order dated 14th February, 1974, therefore, could not have been automatically revised to Rs. 350-600. It appears that the Committee erroneously, without closer scrutiny of the aforesaid Resolution dated 29th September, 1976 or the Corrigendum dated 1st April, 1977, had placed the petitioner in the payscale of Rs. 350-600. Inspite of the approval granted on 3rd May, 1982, the Committee appears to have failed to rectify its mistake. The action of the Committee in sanctioning the scale of Rs. 350-600 to the petitioner being contrary to the aforesaid Revision of Pay Rules of 1975 and the Resolution dated 29th September, 1976, read with Corrigendum dated 1st April, 1977 the petitioner's claim for corresponding revision of pay with effect from 1st January, 1986 cannot be accepted.

In the result, the petition is partly allowed. It is declared that the petitioner was entitled to receive pay in the pay scale of Rs. 290-560 on the date of his appointment. The petitioner is entitled to corresponding revision of payscale with effect from 1st January, 1986 and the annual increments in such scale. Any amount received by the petitioner in excess of his entitlement from the date of his appointment till 31st December, 1985 shall not be recovered from the petitioner and shall be treated as his personal pay. Rule is made absolute to the above extent. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash*